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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 309(j) )  
of the Communications Act )  
Competitive Bidding )

PP Docket No. 93-253

REPLY COMMENTS OF U.S. INTELCO NETWORKS, INC.

U.S. Intelco Networks, Inc. ("USIN"), on behalf of itself and its Independent Telephone Company ("ITC" or "Independent") owners and users and pursuant to Sections 1.415 and 1.419 of the Commission's Rules,<sup>1</sup> respectfully submits the following Reply Comments in response to the Notice of Proposed Rule Making ("NPRM") released herein on October 12, 1993. USIN submits that the record compiled in this proceeding provides general support for many of the positions proposed in USIN's Comments, filed herein November 10, 1993. Accordingly, USIN takes this opportunity to reiterate the shared conviction of commentators that only appropriate auction implementation methodologies will fulfill the Commission's statutory mandate to ensure that the required broad dissemination of spectrum licenses benefits rural America and provides the opportunity for meaningful participation in the provision of

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<sup>1/</sup> 47 C.F.R. §§ 1.415 and 1.419.

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advanced telecommunications services by rural telephone companies.<sup>2</sup>  
In support thereof, USIN shows the following:

I. GENERAL CONSENSUS ON ISSUES OF  
"INTERMEDIATE LINK" AND MINIMUM BID REQUIREMENTS

Commentators almost universally oppose the Commission's proposal to apply auction procedures to so-called "intermediate links."<sup>3</sup> As already noted by USIN herein, the statute does not address "intermediate links" because subscribers do not have direct access to the subject technology; the internal networking function of microwave routes renders these links inappropriate candidates for license award by competitive bidding, and could even result in inefficient competition for licenses on a purely speculative basis.<sup>4</sup> The Commission should, therefore, abandon its tentative proposal to award microwave licenses by auction.

Similarly, virtually all commentators addressing the issue agreed with the Commission's tentative conclusion that minimum bids are unnecessary. Some commentators noted that a minimum bid would impose an artificial constraint on the market process.<sup>5</sup> One party

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<sup>2/</sup> Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), Pub. L. 103-66, 107 Stat. 312 (Aug. 10, 1993), § 6002(a)(3).

<sup>3/</sup> See, e.g., Comments of McCaw Cellular Communications, Inc. ("McCaw") at p. 25; Comments of Sprint Corporation ("Sprint") at p. 21; Comments of AT&T at p. 20; Comments of Cellular Telecommunications Industry Association ("CTIA") at p. 31; Comments of United States Telephone Association at p. 2.

<sup>4/</sup> Accord Comments of CTIA at p. 31.

<sup>5/</sup> See, e.g., Comments of Telocator at p. 4.

suggested that the establishment of a minimum price appears to be inconsistent with statutory goals.<sup>6</sup> Consequently, USIN submits that the adoption of a minimum bid requirement would be contrary to the public interest, and is unsupported by the record compiled to date.

## II. MAJORITY OF COMMENTATORS FAVOR ORAL BIDDING

USIN's review of the record indicates that a majority of commentators favor oral auctions as promoting fairness, encouraging broad participation in the auction process, and fostering economic efficiency.<sup>7</sup> Sealed bids are indicted as fostering needlessly inflated bids,<sup>8</sup> and resort to multiple bidding systems for the award of a single license is attacked as too complex.<sup>9</sup> USIN therefore reiterates its opinion that oral auctions will provide a more level playing field for all auction participants and, would therefore, most appropriately and most fully implement the Congressional mandate to ensure broad dissemination of licenses and promotion of the participation of designated entities, including rural telephone companies.

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<sup>6/</sup> Comments of Southwestern Bell Corporation at p. 39.

<sup>7/</sup> See, e.g., Comments of Rochester Telephone Corporation at p. 8; Comments of AT&T at p. 11; Comments of Cellular Communications, Inc. at p. 1.

<sup>8/</sup> See, e.g., Comments of Cellular Communications, Inc. at p. 7; Comments of Bell Atlantic Personal Communications, Inc. at p. 21 (suggesting the "Japanese Auction" variation of open bidding to reduce the "winner's curse"); Comments of Telocator at p. 3.

<sup>9/</sup> Comments of Arch Communications Group, Inc. at p. 9.

### III. COMBINATORIAL BIDDING SHOULD BE REJECTED

While recognizing that the record is mixed with respect to the issue of combinatorial bidding, USIN nonetheless reiterates its strong opposition to utilization of this technique. Combinatorial bidding unfairly favors deep-pocket players and, for that reason, is directly contrary to Congress' proviso that the Commission utilize its newly-granted authority to award licenses by auction only in a manner which promotes broad dissemination of licenses and creates an atmosphere conducive to both participation in the auction process and also the ultimate provision of service by rural telephone companies, among other designated entities.

USIN notes with interest that many major telecommunications entities also oppose combinatorial bidding.<sup>10</sup> These deep-pocket players fully recognize that this proposal is inconsistent with the statutory objectives of diversity in ownership and prompt provision of service to rural areas. Furthermore, commentators note that combinatorial bidding would inject needless complexity and inefficiency into the entire auctioning process. The Commission's proposal is also attacked as an impermissible bias in favor of national licensing,<sup>11</sup> an approach already rejected by the Commission.

USIN firmly believes that combinatorial bidding will negate the effect of any other mechanisms introduced to level the playing

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<sup>10/</sup> See, e.g., Comments of McCaw at p. 7; Comments of Sprint at p. 4; Comments of AT&T at p. 4; Comments of BellSouth at p. 6; Comments of Pacific Bell at p. 8.

<sup>11/</sup> See, e.g., Comments of Pacific Bell at p. 8.

field for rural telephone companies and other designated entities, and also will divert resources which should be utilized to provide service to rural areas. USIN fully agrees with the observation that combinatorial bidding mechanisms are "fundamentally unfair and irrational" because they will devalue individual licenses, impede entry opportunities and delay early introduction of service to broad areas of the country.<sup>12</sup>

IV. THE DEFINITION OF "RURAL TELEPHONE COMPANY"  
SHOULD BE STRUCTURED TO ACHIEVE CONGRESSIONAL GOALS

USIN's position that the Commission-proposed definition of "rural" telephone companies is too restrictive is supported by a large number of commentators. Many commentators support USIN's proposal that a "small" telephone company should be defined as one with 50,000 or fewer access lines.<sup>13</sup> Similarly, there exists significant support for USIN's proposal that "rural" telephone companies should also be defined as those serving areas with populations of 10,000, as opposed to the Commission's proposal to cap this indicator at 2,500.<sup>14</sup>

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<sup>12</sup>/ Comments of Telocator at pp. 5-6.

<sup>13</sup>/ See, e.g., Comments of MEBTEL, Inc. at p. 3; Comments of Minnesota Equal Access Network Services, Inc. at p. 2; Comments of Iowa Network Services, Inc. at p. 12; Comments of Rural Cellular Corporation at 2.

<sup>14</sup>/ See, e.g., Comments of Telephone Electronics Corporation at p. 12; Comments of Western Alliance at pp. 19-20; Comments of Chickasaw Telephone Company at pp. 3-4; Comments of National Rural Telecom Association at p. 6; Comments of Organization for the Protection and Advancement of Small Telephone Companies at p. 6.

USIN emphasizes its belief that the triple goals of Congress -- provision of service to rural areas, broad dissemination of licenses and the participation of rural telephone companies -- can be accomplished only by the adoption of a definition which is both reflective of reality and responsive to practical requirements. USIN's proposed definition accomplishes this goal by adopting the recognized definition of "small" telephone company and expanding the population benchmark to encompass those areas which are unequivocally "rural" in nature. Artificial limitation of the definition to the "most" rural areas will result in failure to address, let alone accomplish, explicit statutory directives.

V. MEANINGFUL PREFERENCES ARE CRUCIAL TO IMPLEMENTING CONGRESSIONAL MANDATES

The comments filed in this proceeding reflect the importance of implementation of the Commission's proposed set-aside to accomplish the statutory goal of ensuring that designated entities are provided with a meaningful opportunity to participate in the provision of advanced radio services. USIN takes strong exception to those comments which suggest that the set-aside will "distort" the market or otherwise interfere with the rational allocation of scarce resources. It is precisely this tyranny of an unrestrained marketplace which Congress directs the Commission to avoid.

Set-asides are essential to accomplishing the Congressional goal of ensuring meaningful opportunity to designated entities. Misplaced concentration on econometric models and ideals of

"efficiency" ignores Congress' definition of the public interest -- broad dissemination of licenses among qualified applicants, specifically including, among others, rural telephone companies. The Commission must be wary of proposals to modify legislative pronouncements through an administrative process.

While the set-aside will accomplish the crucial first step of guaranteeing the opportunity to enter the market, this process alone will not satisfy the Commission's obligations -- additional steps are required to provide relief to designated entities for them to remain viable players. Consequently, designated entities should be relieved from the onerous exogenous operating expenses associated solely with the auction process. USIN notes that the record is replete with supporting comments concerning the importance of measures including installment payments for a designated entity's winning bid, the use of tax certificates, bid "credits" and other mechanisms.

USIN vociferously disagrees, however, with any suggestions that such preferences should be limited, either with respect to particular frequency bands or geographically. Specifically, USIN reiterates its position that preferential treatment should follow designated entities as they participate in auctions outside the set-aside bands. This approach would enhance designated entities' ability to participate on a level playing field and thereby result in broader dissemination of licenses among qualified entities.

Similarly, USIN submits that confinement of rural telephone companies to their telephone service areas, or even the general

environs of their telephone service areas, is totally unfair. Implementation of this limitation would result in rural telephone companies being a disadvantaged step-child among the designated entities, because they would be the only entities which are confined geographically. The negative repercussions of geographic confinement would be magnified if this proposed geographic confinement were extended to other designated entities. This result would be clearly antithetical to Congressional intent to promote entry of designated entities and broad dispersal of licenses. Moreover, this scheme is totally unsupported by legislative history and is directly contrary to clear statutory language.

Confinement to a rural telephone company's service area is also inimical to Congressional directives because it ignores the fact that rural telephone companies arguably are also eligible for preferential treatment as "small" companies. There simply exists no rational basis for introducing a purely artificial entry restraint on any particular entity, particularly when the Commission is directed, instead, to remove obstacles which may inhibit participation in the auction process.

Consequently, USIN strongly opposes any administrative action which would conflict with statutory directives. USIN submits that set-asides are necessary to ensure designated entities' entry into the field of advanced radio services, and that uniform application of preferential treatment is necessary to both ensure their viability as service providers and promote the Congressional goal



of broad dissemination of licenses.

VI. CONCLUSION

The interest in and importance of this docket is reflected by the extraordinary number and depth of comments received thus far. In promulgating the rules which will guide the industry and shape the market, it is incumbent upon the Commission to measure carefully both its own and various commentators' proposals against express Congressional mandates. USIN therefore respectfully submits that careful observation of legislative goals and directives must be the guiding force for reasoned, sustainable decisions.

Respectfully submitted,

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## Certificate of Service

I, Colleen von Hollen, of Kraskin & Associates, 2120 L Street, NW, Suite 810, Washington, DC 20037, hereby certify that copies of the foregoing Reply Comments of U.S. Intelco Networks, Inc. were served on the 30th day of November, by first class, U.S. mail, postage prepaid, to the following:

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